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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/916,903
Filing Date: July 27, 2001
Appellant(s): CANG ET AL.

MAILED

NOV 29 2006

Technology Center 2600

Mr. Jorge Tony Villabon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 30 October 2006 appealing from the Office action mailed 24 August 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0028194	ELENBASS et al.	2-2005
6,233,389	BARTON et al.	05-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elenbaas et al. (US Pub No. 2005/0028194) in view of Barton (US Pat No. 6,233,389 B1).

In consideration of claim 1, the Elenbaas et al. reference discloses a “method of creating a subset of channels with programming from a plurality of channels” (Abstract). The method comprises “receiving a plurality of channels, wherein the plurality of channels comprises at least one channel with programming” which potentially has information of interest (Para. [0017]). The system subsequently “processes at least one . . . intra and/or non-intra pictures” or MPEG based key-frames (reference pictures are synonymous with intra pictures -- Para. [0025]) to “determine which of the . . . channels contain programming to provide the subset of channels with programming” that is of interest to the user (Para. [0026], [0027], [0030], and [0031]) and “stores the subset of channels into memory” as necessary to facilitate the receiver in tuning to the programs/channels containing information of interest (Figure 3; Para. [0040]).

With respect to the particular step of “encoding”, the reference is silent other than to set forth that the processing occurs in association with “encoded intra and/or non-intra pictures”. Elenbaas et al., however, discloses that the system may be utilized with or embodied in a recording device (Para. [0041]). In an analogous art pertaining to video systems which receive video signal containing numerous channels for viewing, the Barton et al. illustrates a recording device that enables a user to simultaneously watch and record programming (Figures 1 and 2). The method, implemented by the system, comprises “receiving a plurality of channels, wherein the plurality of channels comprises at least one channel with programming” and “encoding at least a portion of a predetermined number of channels from the plurality of channels to provide a corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” (Col 3, Line 30 – Col 4, Line 22; Col 6, Lines 47-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Elenbaas et al. so as to “encode at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Barton et al. and to subsequently “process at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Elenbaas et al. for the purpose of advantageously providing a means for the viewer of the personalized news retrieval system to have the ability to simultaneously record and play back TV broadcast programs in a manner that reduces

processor and system requirements (Barton et al.: Col 1, Lines 52-59) and further supports the flexibility to do so for a variety of channel sources.

Claim 2 is rejected wherein the method further comprises “outputting channels exclusively corresponding to the subset of channels” (Elenbaas et al.: Figure 3; Para. [0040]).

Claim 3 is rejected wherein the method further comprises “analyzing at least a portion of an audio signal in the predetermined channels to determine which of the predetermined number of channels contain programming” of interest (Elenbaas et al.: Para. [0026]).

Claim 4 is rejected wherein “each corresponding encoded signal is an MPEG video signal containing pictures selected from the group comprising intra pictures or non-intra pictures” (Elenbaas et al.: Para. [0025]; Barton et al.: Col 6, Lines 47-58).

Claim 5 is rejected wherein the “processing step further comprises one or more of the steps selected from the group comprising: . . . analyzing discrete cosine coefficients of at least one of the intra pictures in the MPEG video signal” (Elenbaas et al.: Para. [0025]).

Claim 6 is rejected wherein the “encoding step further comprises the step of encoding at least a portion of each of the plurality of channels to provide the corresponding encoded signal for each of the plurality of channels” such that all incoming channels/streams received by the Barton et al. system are encoded as MPEG streams (Barton et al.: Col 3, Lines 30-61).

Claim 7 is rejected wherein the “subset of channels comprises a plurality of channel indicators for identifying the channels in the subset of channels” (Elenbaas et al.: Para. [0022]).

In consideration of claim 8, the Elenbaas et al. reference discloses a “method of creating a subset of channels with programming from a plurality of channels” (Abstract). The method comprises “receiving a plurality of channels, wherein the plurality of channels comprises at least one channel with programming” which potentially have information of interest (Para. [0017]). The system subsequently “processes at least one . . . intra and/or non-intra pictures” or MPEG based key-frames and a “portion of a respective audio signal” associated with the received channels to “determine which of the . . . channels contain programming to provide a program channel” (Para. [0026], [0027], [0030], and [0031]) and “stores the subset of channels into memory” as necessary to facilitate the receiver in tuning to the programs/channels containing information of interest (Figure 3; Para. [0040]).

With respect to the particular step of “encoding”, the reference is silent other than disclose that the processing occurs in association with “encoded intra and/or non-intra pictures”. Elenbaas et al. suggests that the system may be utilized with or embodied in a recording device (Para. [0041]). In an analogous art pertaining to video systems which receive video signal containing numerous channels for viewing, the Barton et al. reference illustrates a recording device that enables a user to simultaneously watch and record programming. As illustrated in Figures 1 and 2, the “method” implemented via the system comprises “receiving a plurality of channels, wherein the plurality of channels comprises at least one channel with programming” and “encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined

number of channels” (Col 3, Line 30 – Col 4, Line 22; Col 6, Lines 47-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Elenbaas et al. so as to “encode at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Barton et al. and to subsequently “process at least one of the corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Elenbaas et al. for the purpose of advantageously providing a means for the viewer of the personalized news retrieval system to have the ability to simultaneously record and play back TV broadcast programs in a manner that reduces processor and system requirements (Barton et al.: Col 1, Lines 52-59) and further supports the flexibility to do so for a variety or wide range of channel sources.

Claim 9 is rejected wherein the “programming on the subset of channels contains video content” (Elenbaas et al.: Para. [0017] – [0018]).

Regarding claim 10, the Elenbaas et al. reference discloses a “system for creating a subset of channels with programming from a plurality of channels” (Abstract). As illustrated in Figure 1, the system comprises a “receiver” [105] for “receiving a plurality of channels, wherein the plurality of channels comprises at least one channel with programming” which potentially has information of interest (Para. [0017]). The system further comprises a “video processor” [100/150] that is programmed to “processes at least one . . . encoded intra and/or non-intra pictures” or MPEG based key-frames to

“determine which of the . . . channels contain programming to provide the subset of channel indicators” (Para. [0026], [0027], [0030], and [0031]) and “memory” (not shown) as necessary to “store the subset of channel indicators” in order to facilitate the receiver to tune to the programs/channels containing information of interest (Figure 3; Para. [0040]).

With respect to the particular step of “encoding”, as aforementioned, Elenbaas et al. is silent. In an analogous art pertaining to video systems which receive video signal containing numerous channels for viewing, the Barton et al. reference illustrates a recording device that enables a user to simultaneously watch and record programming. As illustrated in Figures 1 and 2, the system comprises a “video processor” [101] “programmed to encode at least a portion of a predetermined number of channels from the plurality of channels to provide a corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” (Col 3, Line 30 – Col 4, Line 22; Col 6, Lines 47-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Elenbaas et al. such that the “video processor [is] programmed to encode at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Barton et al. and to subsequently “process at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Elenbaas et al. for the purpose of advantageously providing a means for the viewer of the personalized news retrieval system to have the ability to simultaneously record and play back TV

broadcast programs in a manner that reduces processor and system requirements (Barton et al.: Col 1, Lines 52-59) and further supports the flexibility to do so for a variety or wide range of channel sources.

Claim 11 is rejected wherein the “system presents channels corresponding only of the subset of channel indicators stored in memory” which correspond to the programming of interest as illustrated in Figure 3 of Elenbaas et al.

Claim 12 is rejected wherein the system further comprises an “audio detection circuit” [120] for “analyzing at least a portion of an audio signal in the predetermined channels to determine which of the predetermined number of channels contain programming” of interest to the user (Elenbaas et al.: Para. [0026]).

Claim 13 is rejected wherein “each encoded signal is an MPEG video signal containing pictures selected from the group comprising intra pictures or non-intra pictures” (Barton et al.: Col 6, Lines 47-58).

Claim 14 is rejected wherein the “video processor is further programmed to perform one or more of the steps selected from the group comprising . . . analyzing discrete cosine coefficients of at least one of the intra pictures in the MPEG video signal” (Elenbaas et al.: Para. [0025]).

Claim 15 is rejected wherein the “encoder encodes at least a portion of each of the plurality of channels to provide a corresponding encoded signal for each of the plurality of channels” such that all incoming channels/streams received by the Barton et al. system are encoded as MPEG2 streams by the “encoder” [101] (Barton et al.: Col 3, Lines 30-61).

In consideration of claim 16, the Elenbaas et al. reference discloses a “system for creating a subset of channels with programming from a plurality of channels” (Abstract). As illustrated in Figure 1, the system comprises a “receiver” [105] for “receiving a plurality of channels, wherein the plurality of channels comprises at least one channel with programming including video and audio” which potentially have information of interest (Para. [0017]). The system further comprises a “processor . . . and an audio detection circuit” [100/150] to “processes at least a portion of an audio signal . . . [to] determine which of the . . . channels contain programming to provide a program channel subset containing at least audio and/or video” (Para. [0026], [0027], [0030], and [0031]) and “memory” (not shown) as necessary for “storing the program channel subset” in order to facilitate the receiver to tune to the programs/channels containing information of interest (Figure 3; Para. [0040]).

With respect to the particular step of “encoding”, the reference is silent. In an analogous art pertaining to video systems which receive video signal containing numerous channels for viewing, the Barton et al. reference illustrates a recording device that enables a user to simultaneously watch and record programming. As illustrated in Figures 1 and 2, the system comprises an “encoder” for “encoding at least a portion of a predetermined number of channels from the plurality of channels to provide a corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” (Col 3, Line 30 – Col 4, Line 22; Col 6, Lines 47-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Elenbaas et al. such that the to include an “encoder

for encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels” as taught by Barton et al. and to subsequently “process . . . at least one of the encoder and an audio detection circuit to process at least a portion of an audio signal in the predetermined number of channel from the plurality of channels” as taught by Elenbaas et al. for the purpose of advantageously providing a means for the viewer of the personalized news retrieval system to have the ability to simultaneously record and play back TV broadcast programs in a manner that reduces processor and system requirements (Barton et al.: Col 1, Lines 52-59) and further supports the flexibility to do so for a variety or wide range of channel sources.

Claim 17 is rejected wherein the “subset of channels comprises a plurality of channel indicators for identifying the channels in the subset of channels” (Elenbaas et al.: Para. [0022]).

(10) Response to Argument

Only those arguments raised by the appellant pursuant to the issues on appeal and directed towards the interpretation of particular claim limitations have been considered and are being addressed by the examiner. Any further arguments, that the appellant could have made are not considered issues on appeal and are not being further addressed by the examiner for the panel's consideration. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.¹

I: Rejection of claims 1-17 under 35 U.S.C. 103(a)

A. 35 U.S.C. 103(a) - Claim 1

Elenbaas and Barton, in combination, teach all of the claim elements

Appellant argues:

Elenbaas fails to teach, suggest or make obvious the step of "processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1 (Page 22, Para. 2).

And

Barton fails to teach, suggest or make obvious the steps of "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels" as taught in the Appellant's Specification and claimed by at least the Appellant's claim 1 (Page 24, Para 2).

¹ See 37 CFR 41.50(a)(1) and MPEP 1211

Elenbaas is relied upon for teaching “processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming”. Elenbaas processes MPEG compressed video derived from a number of available channels (Para. [0017] and [0025]). MPEG compressed video comprises intra and/or non-intra pictures. The ‘processing’ involves “determining which of the predetermined number of channels contain programming” and in particular those channels that contain programming of interest to the user (Para. [0017] and [0022]) (ex. news broadcast on CNN). Finding a particular program of interest requires that the system also “determines which of the predetermined number of channels contain programming” in order to receive/process the programming of interest since programming is being received via one of a plurality of channels. Accordingly, Elenbaas clearly teaches “processing at least one of the corresponding intra and/or non-intra pictures for each of the predetermined number of channels to determine which of the predetermined number of channels contain programming”.

Barton is relied upon to teach the step of “encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels”. Barton explicitly states that video programming distributed on at “least a portion of a predetermined number of channels from the plurality of channels” is MPEG encoded (Col 3, Lines 30-61). MPEG encoded video signals comprise ‘intra and/or non-intra pictures’ as required by MPEG encoding. Barton further explicitly

teaches that the encoded video comprises 'intra and/or non-intra pictures' in disclosing the usage of I-frames (intra pictures) and/or P- and B-frames (non-intra pictures) (Col 6, Lines 51-58). Accordingly, Barton clearly teaches the step of "encoding at least a portion of a predetermined number of channels from the plurality of channels to provide corresponding encoded intra and/or non-intra pictures for each of the predetermined number of channels".

Therefore, taken in combination, the references teach all of the claimed limitations.

One of ordinary skill would have been motivated to combine the teachings of Elenbaas and Barton

Appellant argues:

There is no motivation or suggestion in either reference for the combination of the references to attempt to teach the invention . . . specifically because the teachings of Elenbaas and Barton are directed to different solutions addressing deficiencies in prior art of unrelated areas of art (Page 24, Para. 3).

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Obviousness has been established by combining or modifying the teachings of the prior art to produce the claimed invention based on the teaching, suggestion, or

motivation to do so found in the references themselves. Elenbaas is in the same field of endeavor as the instant application, namely video systems that receive video signals containing numerous channels for viewer display. Elenbaas teaches that it would be evident to one of ordinary skill in the art to utilize its principles and techniques in video recording devices (Para. [0041]). Elenbaas, therefore, provides an explicit teaching/suggestion to combine with recording devices.

Barton is also in the same field of endeavor as the application given that it is similarly relates to video systems that receive video signals containing numerous channels for viewer display. Barton is a particular type of recording device that advantageously provides a multimedia time warping system that gives the user the ability to simultaneously record and play back TV broadcast programs (Col 1, Lines 53-60) and provides added flexibility in accepting video inputs in a variety of forms (Col 2, Lines 4-14). Therefore, obviousness has been established by combining the recording device embodiment of Elenbaas with the particularly advantageous recording device teachings of Barton based on the teaching, suggestion, or motivation to do so found in the references themselves.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The particular combination of a prior art reference that explicitly teaches that it would be evident to those skilled in the art to implement its principles/techniques in a recording device (Elenbaas: Para. [0041]) with a particular prior art recording device (Barton) clearly only takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not involve impermissible hindsight.

Therefore, one having ordinary skill in the art at the time the invention was made would have clearly been motivated to combine the teachings of Elenbass with Barton to recreate the claimed subject matter.

B. 35 U.S.C. 103(a) - Claim 2

Appellant's arguments in support for the patentability of claim 2 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 2 recites is not considered an argument for patentability. The limitations of claim 2 are clearly addressed in the rejection. Accordingly, claim 2 is not believed to be separately patentable.

C. 35 U.S.C. 103(a) - Claim 3

Appellant's arguments in support for the patentability of claim 3 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 3 recites is not considered an argument for

patentability. The limitations of claim 3 are clearly addressed in the rejection.

Accordingly, claim 3 is not believed to be separately patentable.

D. 35 U.S.C. 103(a) - Claim 4

Appellant's arguments in support for the patentability of claim 4 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 4 recites is not considered an argument for patentability. The limitations of claim 4 are clearly addressed in the rejection.

Accordingly, claim 4 is not believed to be separately patentable.

E. 35 U.S.C. 103(a) - Claim 5

Appellant's arguments in support for the patentability of claim 5 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 5 recites is not considered an argument for patentability. The limitations of claim 5 are clearly addressed in the rejection.

Accordingly, claim 5 is not believed to be separately patentable.

F. 35 U.S.C. 103(a) - Claim 6

Appellant's arguments in support for the patentability of claim 6 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 6 recites is not considered an argument for

patentability. The limitations of claim 6 are clearly addressed in the rejection.

Accordingly, claim 6 is not believed to be separately patentable.

G. 35 U.S.C. 103(a) - Claim 7

Appellant's arguments in support for the patentability of claim 7 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 7 recites is not considered an argument for patentability. The limitations of claim 7 are clearly addressed in the rejection.

Accordingly, claim 9 is not believed to be separately patentable.

H. 35 U.S.C. 103(a) - Claim 8

Appellant's arguments in support for the patentability of claim 8 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 9 recites is not considered an argument for patentability. The limitations of claim 8 are clearly addressed in the rejection.

Accordingly, claim 8 is not believed to be separately patentable.

I. 35 U.S.C. 103(a) - Claim 9

Appellant's arguments in support for the patentability of claim 9 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 9 recites is not considered an argument for

patentability. The limitations of claim 9 are clearly addressed in the rejection.

Accordingly, claim 9 is not believed to be separately patentable.

J. 35 U.S.C. 103(a) - Claim 10

Appellant's arguments in support for the patentability of claim 10 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 10 recites is not considered an argument for patentability. The limitations of claim 10 are clearly addressed in the rejection.

Accordingly, claim 10 is not believed to be separately patentable.

K. 35 U.S.C. 103(a) - Claim 11

Appellant's arguments in support for the patentability of claim 11 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 11 recites is not considered an argument for patentability. The limitations of claim 11 are clearly addressed in the rejection.

Accordingly, claim 11 is not believed to be separately patentable.

L. 35 U.S.C. 103(a) - Claim 12

Appellant's arguments in support for the patentability of claim 12 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 12 recites is not considered an argument for

patentability. The limitations of claim 12 are clearly addressed in the rejection.
Accordingly, claim 12 is not believed to be separately patentable.

M. 35 U.S.C. 103(a) - Claim 13

Appellant's arguments in support for the patentability of claim 13 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 13 recites is not considered an argument for patentability. The limitations of claim 13 are clearly addressed in the rejection.
Accordingly, claim 13 is not believed to be separately patentable.

N. 35 U.S.C. 103(a) - Claim 14

Appellant's arguments in support for the patentability of claim 14 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 14 recites is not considered an argument for patentability. The limitations of claim 14 are clearly addressed in the rejection.
Accordingly, claim 14 is not believed to be separately patentable.

O. 35 U.S.C. 103(a) - Claim 15

Appellant's arguments in support for the patentability of claim 15 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 15 recites is not considered an argument for

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patentability. The limitations of claim 15 are clearly addressed in the rejection.

Accordingly, claim 15 is not believed to be separately patentable.

P. 35 U.S.C. 103(a) - Claim 16

Appellant's arguments in support for the patentability of claim 16 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 16 recites is not considered an argument for patentability. The limitations of claim 16 are clearly addressed in the rejection.

Accordingly, claim 16 is not believed to be separately patentable.

M. 35 U.S.C. 103(a) - Claim 17

Appellant's arguments in support for the patentability of claim 17 are limited to previously addressed arguments presented in support of independent claim 1. The further statement that particularly points what claim 17 recites is not considered an argument for patentability. The limitations of claim 17 are clearly addressed in the rejection.

Accordingly, claim 17 is not believed to be separately patentable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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SEB

November 21, 2006

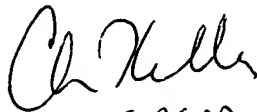
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